

SUPERIOR COURT OF ARIZONA
APACHE COUNTY
MARICOPA COUNTY

10/29/2008

CLERK OF THE COURT
FORM V000

HONORABLE EDDWARD BALLINGER, JR.

R. TOMLINSON
DEPUTY

FILED: November 25, 2008

In Re the General Adjudication of
All Rights to Use Water in the Little
Colorado River System and Source

CV-6417

COPY

In Re Motions for Summary Judgment on
Water Rights Claims By and For the Hopi
Tribe to Surface Streams That Do Not
Traverse Any Part of the Hopi Reservation

MINUTE ENTRY

2:01 p.m. This is the time set for Oral Argument Re Motions for Summary Judgment on Water Rights Claims By and For the Hopi Tribe to Surface Streams That Do Not Traverse Any Part of the Hopi Reservation. Present are: Scott B. McElroy and Daniel E. Steuer on behalf of the Navajo Nation; Lauren J. Caster and Gregory L. Adams on behalf of Catalyst Paper (Snowflake) Inc.; Susan B. Montgomery and Robyn L. Interpreter on behalf of the Yavapai-Apache Nation; A. Scott Canty and Harry R. Sachse on behalf of the Hopi Tribe; Mark A. McGinnis, Patrick B. Sigl, John B. Weldon, Jr., and M. Byron Lewis on behalf of Salt River Project; Andrew "Guss" Guarino on behalf of the United States Department of Justice; Kenneth D. Nyman on behalf of the Arizona Attorney General's Office; L. William Staudenmaier on behalf of Arizona Public Service; Mary G. Davidson on behalf of the City of Flagstaff; Janet L. Ronald and Richard T. Burtell on behalf of the Arizona Department of Water Resources; and Cynthia M. Chandley on behalf of Freeport McMoRan Corporation.

Special Master George A. Schade, Jr. and his assistant Barbara K. Brown are present.

Court reporter, Kim Hannan, is present as well as a record of the proceedings being made by CD/videotape.

Procedural matters are discussed. In that regard,

IT IS ORDERED granting Salt River Project's (SRP) and the Hopi Tribe's requests for leave to file supplemental responses.

IT IS FURTHER ORDERED permitting any party, other than SRP and the Hopi Tribe, who wishes to file memoranda concerning only the issue raised in SRP's supplemental memorandum, may do so on or before **December 15, 2008**.

If after reviewing the supplemental memoranda the Court determines that additional oral argument is necessary, a hearing will be set.

The Court addresses Mr. Sachse, who represents the Hopi Tribe, with respect to the Court's interpretation of the relief requested by the Tribe.

The Court addresses Mr. McElroy, who represents the Navajo Nation, with the Court's interpretation of the Navajo Nation's position.

Mr. Sachse presents further argument on the Hopi Tribe's position.

The Court having determined that neither the *Gila V* analysis nor expressed water rights grants are relevant to today's hearing, requests that the parties address the question of whether it is fair to say that all of the case decisions upholding water rights grants to Indian Tribes fall into the following categories: 1) implied rights to sources found on the reservation or appurtenant to the reservation, specifically referring to bordering, running through, or underneath the reservation or 2) when a geographic connection did not exist, express rights such as those granted to the Klamath Tribe and those provided for fishing rights to the Yakima Tribe.

Mr. McGinnis, who represents SRP, presents arguments to the Court.

Mr. Guarino, who represents the United States Department of Justice, presents arguments to the Court.

3:24 p.m. Court stands at recess.

3:41 p.m. Court reconvenes with respective counsel present.

Court reporter, Kim Hannan, is present as well as a record of the proceedings being made by CD/videotape.

Mr. Sachse presents arguments to the Court.

Mr. McGinnis presents arguments to the Court.

Mr. McElroy presents arguments to the Court.

Ms Davidson, who represents the City of Flagstaff, presents arguments to the Court.

Mr. Caster, who represents Catalyst Paper (Snowflake) Inc., presents arguments to the Court.

Mr. Sachse presents further arguments to the Court.

Upon request of Mr. Sachse and good cause having been shown,

IT IS ORDERED amending the above stated order permitting supplemental memoranda to be filed addressing only the issues in SRP's supplemental brief to include that all parties wishing to file memoranda may do so.

Mr. McGinnis presents additional arguments to the Court.

Mr. Guarino presents closing argument.

Mr. McElroy presents closing argument.

IT IS ORDERED taking this matter under advisement.

5:04 p.m. Matter concludes.

A copy of this minute entry is mailed to all parties on the Court-approved mailing list for Little Colorado River Adjudication Civil No. 6417 dated July 25, 2008.